

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ACADEMY OF ALLERGY & ASTHMA  
IN PRIMARY CARE, et al.,

*Plaintiffs,*

V.

AMERICAN ACADEMY OF ALLERGY,  
ASTHMA & IMMUNOLOGY, et al.,

*Defendants.*

CIVIL NO. 5:14-cv-00035-OLG-JWP

**DEFENDANTS ALLERGY AND ASTHMA NETWORK/MOTHERS OF ASTHMATICS,  
INC. AND TONYA WINDERS' DESIGNATION OF EXPERTS**

TO: Plaintiffs, by and through their attorneys of record, Casey Low, Dillon J. Ferguson, Benjamin Bernell, Elizabeth Kozlow Maracum, Pilsbury Winthrop Shaw Pittman LLP, 111 Congress Ave., Suite 400, Austin, Texas 78701.

Defendants Allergy and Asthma Network/Mothers of Asthmatics, Inc. (“AAN”) and Tonya Winders (“Winders”) (together, the “AAN Defendants”) file the following designation of experts pursuant to the Court’s Scheduling Orders (Dkt. No. 208, 246). The AAN Defendants will also serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B). The AAN Defendants reserve the right to supplement these disclosures and designate additional experts after the conclusion of depositions and as additional facts are learned in discovery.

The AAN Defendants designate the following experts:

1. Peter R. Kongstvedt, MD, FACP  
P.R. Kongstvedt Company LLC  
PMB 426  
1350 Beverly Road, Ste. 115  
McLean, VA 22101-3633  
(703) 442-8918

**DEFENDANTS ALLERGY & ASTHMA NETWORK/MOTHERS  
OF ASTHMATICS AND TONYA WINDERS' DESIGNATION OF EXPERTS**

Dr. Kongstvedt is expected to rebut the opinions of Plaintiffs' expert, Dr. Peter Boland, as outlined in his report, which is being separately served on all parties of record. The basis and reasons for Dr. Kongstvedt's opinions, and the data and material he used to form those opinions, are described in his report. Dr. Kongstvedt's extensive experience and qualifications, including a list of all publications authored in the previous 10 years, as well as a list of all other cases in which Dr. Kongstvedt has testified as an expert at trial or by deposition during the previous 4 years, are also included in his report. Finally, Dr. Kongstvedt's compensation can be found in the report.

2. David M. Eisenstadt, PhD  
Navigant Economics  
1200 19<sup>th</sup> Street, NW, Suite 700  
202.973.2400

Dr. Eisenstadt is expected to express the opinions described in his report, which is being served separately on all counsel of record. The basis and reasons for Dr. Eisenstadt's opinions, and the data and material he used to form those opinions, are described in his report. Dr. Eisenstadt's experience and qualifications, including a list of all publications authored in the previous 10 years, as well as a list of all other cases in which Dr. Eisenstadt has testified as an expert at trial or by deposition during the previous 4 years, are also included in his report. Finally, Dr. Eisenstadt's compensation can be found in the report.

3. Steven Wiggins  
Charles River Associates  
Galleria Tower, Suite 600  
1716 Briarcrest Drive  
Bryan, Texas 77802-2751  
979-691-0600

Mr. Wiggins is expected to express the opinions described in his report, which is being served separately on all counsel of record. The basis and reasons for Mr. Wiggins's opinions, and the data and material he used to form those opinions, are described in his report. Mr. Wiggins's

experience and qualifications, including a list of all publications authored in the previous 10 years, as well as a list of all other cases in which Mr. Wiggins has testified as an expert at trial or by deposition during the previous 4 years, are also included in his report. Finally, Mr. Wiggins's compensation can be found in the report.

4. Wendy Weiss  
Managing Director, Navigant Consulting, Inc.  
Healthcare and Life Sciences Disputes, Regulatory, Compliance & Investigations  
515 South Flower Street, Suite 3500  
Los Angeles, California 90071  
(213) 670-2773

Ms. Weiss is expected to express the opinions described in her report, which was previously served on May 2, 2016. The basis and reasons for Ms. Weiss's opinions, and the data and material she used to form those opinions, are described in her report. Ms. Weiss's experience and qualifications, including a list of all publications authored in the previous 10 years, as well as a list of all other cases in which Ms. Weiss has testified as an expert at trial or by deposition during the previous 4 years, are also included in her report. Finally, Ms. Weiss's compensation can be found in the report.

5. E. Leon Carter  
Carter Scholer Arnett Hamada Mockler, PLLC  
8150 North Central Expressway, Suite 500  
Dallas, Texas 75206  
214-550-8188

Mr. Carter may testify regarding the reasonableness of Plaintiffs' claims for attorneys' fees and expenses in connection with this lawsuit. Mr. Carter will testify on the basis of his experience, education and training, his knowledge of the instant litigation, his knowledge of the market for legal services in the relevant specialties and geographic area(s), and any evidence which may be presented in connection with Plaintiff's claims for attorneys' fees and expenses. A copy of Mr. Carter's current resume was separately served on all counsel of record.

This description of each expert's expected testimony is intended to be general, not exhaustive. All designated experts may testify in rebuttal to evidence and testimony presented by Defendants/Counter-Plaintiffs any any of their witnesses. In addition, it is anticipated that some fact witnesses not retained or specially employed for other purpose of rendering expert testimony on behalf of the AAN Defendants may give testimony in the nature of an opinion or combination of fact and opinion testimony in their respective disciplines, and that such testimony would be based on their education, experience, and training. These witnesses include:

1. James Sublett, MD  
c/o Rachel Brass  
Gibson Dunn Crutcher  
555 Mission Street  
15 Suite 3000  
San Francisco, Ca 94105-0921  
415-393-8293

Dr. Sublett is a practicing allergist who has been deposed in this case. He may offer opinion testimony regarding the methodology employed by UAS in studies to validate its protocol, including efficacy and safety of the UAS protocol. In particular, it is expected he will testify that the UAS efficacy study is of questionable validity due to sample size and sampling bias, its retrospective nature, and failure to control for placebo effect. He will also testify regarding the reputation and authoritative nature of certain medical journals, as well as the difference between poster presentations and peer-reviewed journal articles. He may also offer opinion testimony regarding the dangers associated with home administration of immunotherapy, including that anaphylaxis is a real and potentially life-threatening risk, and that because of this, immunotherapy should be administered in a medical setting with access to emergency responsive treatment. He may also offer opinions regarding the proper training necessary to read and interpret skin test results and to prescribe immunotherapy. In particular, he will testify that testing and treatment

must be determined in the context of clinical symptoms which are best evaluated by individuals with specialized training in allergies and immunology.

2. Lyndon Mansfield, MD  
c/o Rachel Brass  
Gibson Dunn Crutcher  
555 Mission Street  
15 Suite 3000  
San Francisco, Ca 94105-0921  
415-393-8293

Dr. Mansfield is a practicing allergist who has been deposed in this case. He may offer opinion testimony regarding the dangers associated with home administration of immunotherapy, including that anaphylaxis is a real and potentially life-threatening risk, and that because of this, immunotherapy should be administered in a medical setting with access to emergency responsive treatment. He may also offer opinions regarding the UAS protocol and proper training necessary to read and interpret skin test results and to prescribe immunotherapy. In particular, he will testify that testing and treatment must be determined in the context of clinical symptoms which are best evaluated by individuals with specialized training in allergies and immunology.

3. Stanley Fineman, MD  
c/o Frank M. Lowrey, IV, ESQ.  
Samika Boyd, ESQ.  
11 Bondurant, Mixson & Elmore, LLP  
One Atlantic Center  
1201 West Peachtree Street, N.W.  
Suite 3900  
Atlanta, Georgia 30309  
404-881-4118

Dr. Fineman is a practicing allergist who has been deposed in this case. He may offer opinion testimony regarding the dangers associated with home administration of immunotherapy, including that anaphylaxis is a real and potentially life-threatening risk, and that because of this, immunotherapy should be administered in a medical setting with access to emergency responsive

treatment. He may also offer opinions regarding the UAS protocol and proper training necessary to read and interpret skin test results and to prescribe immunotherapy. In particular, he will testify that testing and treatment must be determined in the context of clinical symptoms which are best evaluated by individuals with specialized training in allergies and immunology.

4. Theodore Freeman, MD  
c/o Catherine L. Kyle  
301 Congress  
21<sup>st</sup> Floor  
Austin, TX 78701  
512-474-9124

Dr. Freeman is a practicing allergist who has been deposed in this case. He may offer opinion testimony regarding the dangers associated with home administration of immunotherapy, including that anaphylaxis is a real and potentially life-threatening risk, and that because of this, immunotherapy should be administered in a medical setting with access to emergency responsive treatment. He may also offer opinions regarding the UAS protocol and proper training necessary to read and interpret skin test results and to prescribe immunotherapy. In particular, he will testify that testing and treatment must be determined in the context of clinical symptoms which are best evaluated by individuals with specialized training in allergies and immunology.

5. Dr. Dwight Brower  
c/o Andy O'Brien  
Allison Pham  
5525 Reitz Avenue  
Baton Rouge, Louisiana 70809

Dr. Brower is the medical director for Blue Cross Blue Shield of Louisiana. He is expected to offer opinions regarding what factors are considered in setting reimbursement policies, including sources of information properly considered in determining medical benefits coverage and credentialing requirements. In particular, he is expected to testify that it is reasonable and appropriate to consider the opinions and input of specialists within the applicable field of medicine,

as well as practice parameters and peer-reviewed literature relevant to a practice specialty. He will further testify that it is reasonable and proper to rely on the Practice Parameters promulgated by the AAAAI and ACAAI, as well as communications with board-certified allergists, in developing policies with respect to allergy testing and immunotherapy. Dr. Brower will also testify regarding what sources of information are not credible or reasonable to rely upon, including “poster” presentations, advocacy articles from organizations such as AANMA, advertising, and solicitations. Dr. Brower may also testify to the factors considered in determining medical necessity, and that the UAS protocol fails to meet the medical necessity standard for a variety of reasons, primarily because the UAS protocol is not 1) in accordance with nationally accepted practices and standards; and (2) is costlier than services that provide equivalent results. In particular, the reliance on home immunotherapy and the dosage, frequency of injections, and length of immunotherapy involved in the UAS protocol is not consistent with medical convention and national standards. Further, there are legitimate concerns about home immunotherapy and the risk of an anaphylactic reaction from the patient. Dr. Brower will also testify that UAS provides a more expensive service that involved weaker injections that were not as efficacious as traditional treatment.

6. Dr. Michael Martin  
c/o Janie Fenton  
320 W. Capitol  
Suite 211  
Little Rock, Arkansas 72201

Dr. Martin is the medical director for BCBS Arkansas. He is expected to offer opinions regarding what factors are considered in setting reimbursement policy, including the sources of information properly considered in determining medical benefits coverage and credentialing requirements. In particular, he is expected to testify that it is reasonable and appropriate to consider

the opinions and input of specialists within the applicable field of medicine, as well as practice parameters and peer-reviewed literature relevant to a practice specialty. Dr. Martin is also expected to testify regarding what sources of information are not credible or reasonable to rely upon, including “poster” presentations, advocacy articles from organizations such as AANMA, advertising, and solicitations. Dr. Martin may also testify regarding the relative cost of the UAS protocol to that typically billed by allergists.

7. Dr. Barry Lachman  
Mr. Robert M. Cohan  
JACKSON WALKER, LLP  
901 Main Street, Suite 6000  
Dallas, Texas 75202  
214.953.6000

Dr. Lachman is the medical director for Parkland Community Health Plan. He is expected to offer opinions regarding what factors are considered in setting reimbursement policy, including the sources of information properly considered in determining medical benefits coverage and credentialing requirements. In particular, he is expected to testify that it is reasonable and appropriate to consider the opinions and input of specialists within the applicable field of medicine, as well as practice parameters and peer-reviewed literature relevant to a practice specialty. Dr. Lachman may also testify regarding what sources of information are not credible or reasonable to rely upon, including advocacy articles from organizations such as AANMA, advertising, and solicitations. He may offer opinion testimony regarding the dangers associated with home administration of immunotherapy, including that anaphylaxis is a real and potentially life-threatening risk, and that because of this, immunotherapy should be administered in a medical setting with access to emergency responsive treatment. He may also offer opinions regarding the UAS protocol and proper training necessary to read and interpret skin test results and to prescribe immunotherapy. In particular, he is expected to testify that testing and treatment must be



determined in the context of clinical symptoms which are best evaluated by individuals with specialized training in allergies and immunology.

8. David Palafox, MD  
c/o Ruben Gabriel Duarte  
Assistant County Attorney  
500 E. San Antonio  
County Courthouse, Room 503  
El Paso, Texas 79901

Dr. Palafox is the medical director for El Paso First. He is expected to offer opinions regarding what factors are considered in setting reimbursement policy, including the sources of information properly considered in making claims determinations and medical reviews of claims for reimbursement. In particular, he is expected to testify that it is reasonable and appropriate to consider the opinions and input of specialists within the applicable field of medicine, as well as practice parameters and peer-reviewed literature relevant to a practice specialty. Dr. Palafox is also expected to testify regarding the processes used by insurance plans in developing or modifying coverage policies, including sudden utilization changes and standard medical practice.

Dated: June 8, 2016

Respectfully submitted,

/s/ Linda R. Stahl

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***ATTORNEY FOR DEFENDANTS  
ALLERGY AND ASTHMA NETWORK/  
MOTHERS OF ASTHMATICS, INC. and  
TONYA WINDERS***

**CERTIFICATE OF SERVICE**

I certify that the foregoing document was served upon all counsel of record via the Court's CM/ECF electronic filing system and via email in accordance with the Federal Rules of Civil Procedure on June 8, 2016.

<b>Counsel for Plaintiffs Academy of Allergy &amp; Asthma In Primary Care and United Biologics d/b/a United Allergy Services</b> Ronald Casey Low Pillsbury Winthrop Shaw Pittman LLP 401 Congress Avenue, Suite 1700 Austin, TX 78701 casey.low@pillsburylaw.com	<b>Counsel for Defendants Phadia US, Inc. and Thermo Fisher Scientific, Inc.</b> James A. Reeder, Jr. Christopher V. Popov Nicholas Shum VINSON & ELKINS 1001 Fannin Street, Suite 2500 Houston, TX 77002 jreeder@velaw.com cpopov@velaw.com nshum@velaw.com  Liane Noble Michelle Arishita VINSON & ELKINS 2801 Via Fortuna, Suite 100 Austin, TX 78746 lnoble@velaw.com marishita@velaw.com
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/s/ Linda R. Stahl

Linda R. Stahl